IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 651 of 2005

Kishore Kumar Kharola
S/o Sri Dayal Singh Kharola
R/o Mohalla Barahat, Uttarkashi
District Uttarkashi … Applicant

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Uttarkashi
3. Sessions Judge, Uttarkashi
4. Rupendra Nath Mishra
   Paiyojna Nideshak Zila Gramaya
   Vikas Abhikaran Uttarkashi … Opposite parties

Hon'ble B.C. Kandpal, J

This petition under Section 482 Cr.P.C. has been filed by the applicant for setting aside the order dated 14.03.2005 and 04.06.2005 passed Judicial Magistrate, Uttarkashi and Sessions Judge, Uttarkashi respectively in Criminal Case No. 110 of 2003 under Section 406, 407, 420, 466, 468 of I.P.C.

The factual position in a nutshell is that one Rupendra Nath Mishra – respondent No. 4 lodged the First Information Report against the applicant and two other, namely, Vijay Laxmi Thalwal and Purshottam Thalwal with the allegation that an amount of Rs. 20,000/- (Rupees Twenty thousand only) was given by the Government for Village Panchayat and Rs. 60,000/- (Rupees Sixty thousand only) was also given under Jawahar Rojgar Yojna. A sum of Rs. 80,000/- (Rupees Eighty thousand only) was also given to Himalayan Audyogik Prashikshan Sansthan Jagipara, Uttarkashi. This amount given by the State Government was not used in proper manner and the petitioner along with two others have embezzled that amount. The charge was framed against the applicant and the proceedings were going on before the court below. A letter was issued by the Government and the same was sent to the District Magistrate stating therein that the Government has decided to

withdraw the prosecution against the accused persons (including the petitioner).

On the basis of the aforesaid letter an application for withdrawal of the criminal case was moved by the State counsel, but it was rejected by the learned Magistrate. The petitioner preferred the revision against the order passed by the learned Magistrate, but the same was also dismissed vide judgment and order dated 04.06.2005.

Feeling aggrieved by the aforesaid impugned order, the petitioner has filed this petition under Section 482 Cr.P.C. before this Court.

The petitioner along with this petition has filed the copy of the judgment passed by Justice J.C.S. Rawat which reveals that the remaining two accused, namely, Vijay Laxmi Thalwal and Purshottam Thalwal have earlier preferred the petition under Section 482 Cr.P.C. before this Court and the Court remitted the matter to the trial court for deciding the same afresh in the light of the observations made by the High court in the aforesaid judgment dated 10.08.2005.

I perused the judgment passed by this Court and I am of the view that this matter also deserves to be remanded back. Accordingly, keeping in view the argument advanced by Sri H.M. Raturi, learned counsel for the applicant as well as in view of the judgment cited before me, the case is remitted back to the learned trial court for deciding the issue afresh in the light of the observations made by this Court vide judgment and order dated 10.08.2005. In case, if the public prosecutor has not placed the entire material, will place the same before the court and the court below on the basis of which will come to the conclusion as to whether the permission for withdrawal of the case is to be granted or not.

With the aforesaid observations, the petition is disposed of finally.

(B.C. Kandpal, J.)

27.09.2005
ASWAL